

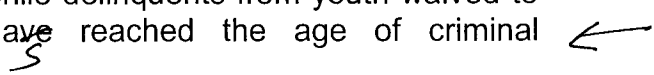
**SEPARATION OF JUVENILES FROM ADULT INMATES**  
**Section 223(a)(12) of the JJDP Act of 2002**

**STATE OF MICHIGAN PLAN FOR COMPLIANCE**

**INTRODUCTION**

Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 2002 addresses the requirement for sight and sound separation of juvenile offenders from adult detainees. Michigan has been in compliance with the separation requirement of the JJDP Act as it relates to the detention of juveniles in facilities designed to incarcerate adults.

The age of criminal responsibility in Michigan is 17. Michigan law requires separation of juveniles from adult prisoners in that, if a juvenile under the age of 17 is taken into custody or detained, "the juvenile shall not be confined in any police station, prison, jail, lock-up or reformatory, or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons," pursuant to MCL 712A.16(1). Thus, sight and sound separation of juveniles from adult offenders is mandated by state law. Law enforcement agencies are aware of this requirement and each agency has its own method of ensuring that separation is achieved.

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) has informed states that a new interpretation of the separation requirement of the JJDP Act makes separation applicable to youth populations placed in juvenile facilities. It requires the separation of juvenile delinquents from youth waived to adult court once the waived youth have reached the age of criminal responsibility. 

Once aware of the new interpretation of the separation requirement announced by OJJDP, the Bureau of Juvenile Justice (Michigan Department of Human Services) sent a request for information to Deputy Administrator William Woodruff. Three issues were addressed as follows:

- 1) The interchangeable use of the terms "age of majority" and "age of criminal responsibility". Since the age of majority in Michigan is different from the age of criminal responsibility, BJJ requested clarification with regard to the use of the terms.
- 2) Michigan law allowing the prosecutor or court to designate a youth to be tried in the same manner as an adult in the family division (juvenile court). BJJ requested clarification on the status of youth adjudicated pursuant to designated proceedings.
- 3) Sight/sound separation. BJJ requested clarification about the meaning of those terms as they relate to co-mingling of individuals in juvenile facilities.

Michigan's preliminary efforts at data collection pursuant to the new interpretation of the separation requirement began with calendar year 2003. Absent clarification from OJJDP on the state's designated proceeding statutes, data was initially compiled to include youth held in juvenile facilities under that authority. More recently and with clarification provided by OJJDP, efforts are focused on cases of juveniles waived to adult court and subsequently placed in juvenile facilities.

Details of Michigan's compliance plan are outlined in this document. However, the DHS staff, along with the state SAG will be forwarding information to the Governor recommending that Michigan join other state governors in contacting OJJDP to express concerns with the new interpretation of the sight and sound separation requirement.

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## **PART I      LEGISLATION GOVERNING SENTENCING OF WAIVED YOUTH**

Michigan law provides two methods by which juveniles can be waived from the jurisdiction of the family court to an adult criminal court.

Automatic waiver: A youth 14 years of age or older can be charged with a specified juvenile violation (See Attachment A) in adult court by the prosecutor. The family court never has jurisdiction over a juvenile charged with a specified juvenile violation; thus a waiver hearing is not held. A juvenile charged in adult criminal court by the prosecutor and convicted of a selected specified juvenile violation (designated in bold in Attachment A), must be sentenced as an adult.

Unless the juvenile is required to be sentenced as an adult, a sentencing hearing is held to determine, based on enumerated factors, whether it is in the best interests of the public to place the juvenile on probation and commit the youth to a juvenile institution. If such a determination is not made, the youth must be sentenced as an adult. Also, if the prosecutor and youth agree, the sentencing hearing may be waived and the youth must be committed to a juvenile institution. Youth committed by an adult court to a juvenile institution may remain there until the youth's twenty-first birthday.

Traditional waiver: A youth 14 years of age or older, charged with any act which would be a felony if committed by an adult, may be waived to the adult system after a motion for waiver by the prosecutor and following a two phase hearing in the family court. The first part of the hearing must determine that there is probable cause to believe that the youth committed an offense that would be a felony if committed by an adult. The second phase of the hearing must determine that it would be in the best interests of the youth and the public to try the youth as an adult. The court may waive the second hearing if the youth has previously been waived to the adult system for a prior offense. A youth waived to

the adult criminal court and convicted of an offense must receive an adult sentence.

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## **PART II BACKGROUND OF COMPLIANCE PLAN REQUIREMENT**

Pursuant to the JJDP Act of 2002 (42 U.S.C. 5633), Section 223(a)(12), "...juveniles alleged to be or found to be delinquents or juveniles in the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates."

The definition of an "adult inmate", per 42 U.S.C. 5603, Section 103(26) of the JJDP Act is "an individual who has reached the age of full criminal responsibility under applicable state law; and has been arrested and is in custody or awaiting trial on a criminal charge, or is convicted of a criminal offense."

Thus, accused or adjudicated delinquent offenders, status offender and non-offenders cannot have contact with adult inmates. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct verbal communication between adult inmates and juvenile offenders. Separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults.

Prior to 2003, a federal policy regarding the separation requirement was set forth in the *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended, December 2001*. "OJJDP policy excepts individuals placed in a juvenile correctional facility while they are legally a juvenile and who become an adult while under criminal court jurisdiction as long as the placement is 'uninterrupted'. This policy precludes a transfer to another juvenile facility or the return of the individual to the juvenile facility following a release on probation or parole."

In a memorandum to states dated October 30, 2003, William Woodruff, OJJDP Deputy Administrator, described the OJJDP intent to implement and enforce a new policy contained in the agency's updated *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002*. The new policy states that "A juvenile who has been transferred, waived, or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or a juvenile detention facility with other juveniles who are under the jurisdiction of the juvenile court. Once the transferred, waived or certified youth becomes an adult, however, he or she must be transferred to an adult facility within six months."

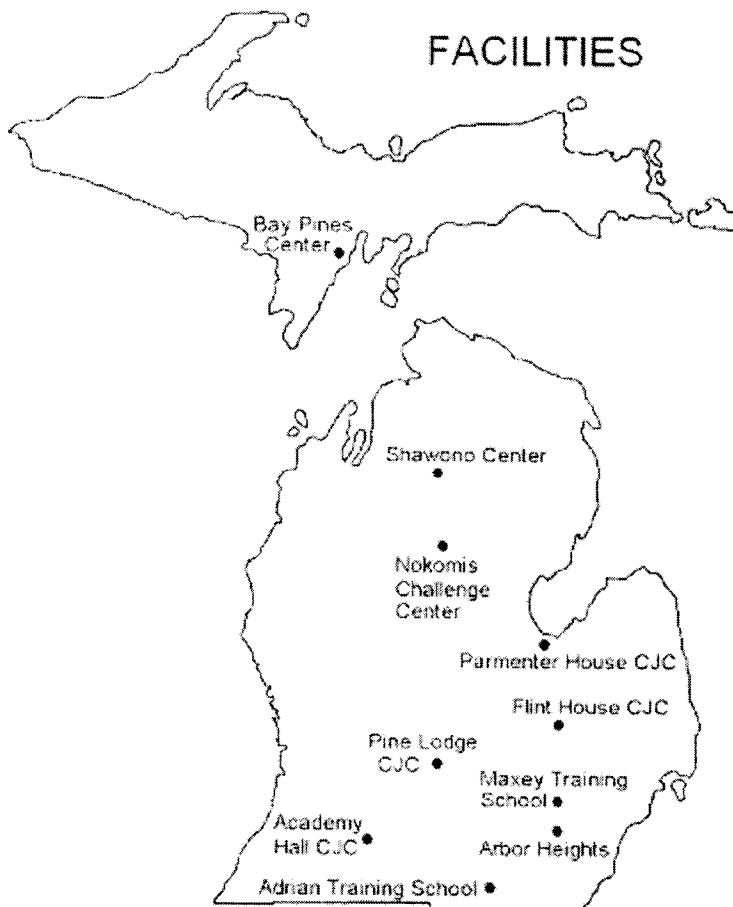
Further clarification was provided on page 2 of the memorandum as follows:  
"Separation may be accomplished architecturally, or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adult inmates, or by transfer to the adult system."

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### **PART III      OVERVIEW OF DEPARTMENT OF HUMAN SERVICES/BUREAU OF JUVENILE JUSTICE FACILITIES**

Facilities administered by the Michigan Department of Human Services, Bureau of Juvenile Justice provide both secure and transitional environments for youth. They are located in various communities throughout the state. In addition to these facilities, several other secure private facilities operate within the state providing treatment for adjudicated youth. A number of private agencies also provide nonsecure programs.

**Map of BJJ-operated Facilities in Michigan**



## **Bureau of Juvenile Justice Residential Facilities (Training Schools)**

These facilities provide safe and secure residential treatment services for youth ages 12 to 21. A variety of youth populations are served in highly structured treatment programs designed to meet their individual needs.



### **Nokomis Challenge Center, Prudenville**

Capacity: 40

Accomplishments for 2005:

- Treatment: Substance Abuse Treatment
- Balanced and Restorative Justice Projects: local school district, Project Hope, Adopt-a-Forest, Hurricane Katrina victims, Thanksgiving Dinner for low income community members
- Community Outreach: Team building exercises for local community groups with the Challenge

Course, presentations at local schools regarding drugs and legal issues

### **Shawono Center, Grayling**

Capacity: 32

Accomplishments for 2005:

- Treatment: Sexual offender specific treatment program, grief and loss group, substance abuse group, cognitive behavioral approach to addiction group, AA
- Balanced and Restorative Justice Projects: Fall dinner for senior citizens, Thanksgiving Dinner, Red Cross Blood Drives, Paper drive for Crawford County Library, assistance to domestic violence shelter, helping at Special Olympics, baking cookies for National Guard in Iraq, youth paid over \$900.00 in restitution to their respective courts
- Community Outreach: community speaker Sheila Simpson, job skills, and Planned Parenthood



### **Adrian Training School, Adrian**

Capacity: 71

Accomplishments for 2005:

- Treatment: Sexual assault victims
- Community outreach: Work study opportunities through Goodwill, 2 youth employed at Shop Goodwill (off campus), Community Advisory Board meets monthly, 19 youth participated in work readiness program
- Balanced and Restorative Justice Projects: Kids

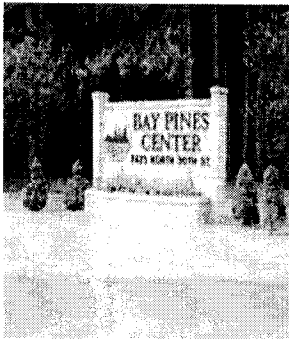
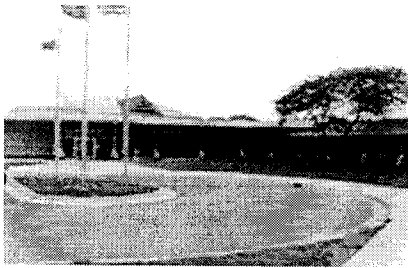
Closet merged with Adrian Training School

### **W.J. Maxey Training School, Whitmore Lake**

Capacity: 180

Accomplishments for 2005:

- Balanced and Restorative Justice Projects: Detroit Food Bank, Whitmore Lake Nursing Home, Leo's Soup Kitchen, Animal Shelter in Livingston County, Habitat for Humanity
- Community Outreach: Youth Dinner Theatre, creative writing classes, Community College classes, 2 Victim Impact Panels, Parent Open House
- Treatment: Expanded Mental Health programs, 19 youth achieved High School diploma and 30 achieved their G.E.D. certification



### **Bay Pines Center, Escanaba**

Capacity: 40

Accomplishments for 2005:

- Treatment: New substance abuse treatment program for young women
- Balanced and Restorative Justice Projects: Youth worked with United Way, local women's center, Red Cross blood drive, Special Olympics, DNR Restoration Projects, Habitat for Humanity, Bishop Noah home for the elderly
- Community Outreach: Family Christmas Dinner, Annual Prom, Community Advisory Committee Rummage Sale

### **Bureau of Juvenile Justice Nonsecure Transition Facilities**

Transition programs prepare youth for successful reintegration into a less structured setting in their communities or an independent living setting. Serving various populations, these programs provide opportunities for youth for continuing treatment, educational and/or vocational training and development of life skills.

Academy Hall Community Justice Center, Kalamazoo  
Arbor Heights Center, Ann Arbor  
Flint Community Justice Center, Flint  
Parmenter Community Justice Center, Bay City  
Pine Lodge Center, Lansing

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#### **PART IV      MICHIGAN DEPARTMENT OF HUMAN SERVICES NEEDS BASED ASSESSMENTS FOR PLACEMENTS**

The Juvenile Justice Assignment Unit (JJAU) within the Bureau of Juvenile Justice (Michigan Department of Human Services) handles appropriate placement of youth requiring residential placement for treatment. Through a process of matching the age, gender, security level and treatment needs identified in the youth's strength and needs document, the programs best suited to address those treatment needs having a current vacancy are identified.

The strength and needs assessment has been developed to ensure that each juvenile will receive safe and proper care and services designed to meet his/her individual needs. Family relationships, emotional stability, history of substance abuse, prior adjudications, victimization, and educational level are all areas of the youth's life that are examined.

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#### **PART V      COMPLIANCE PLAN**

**OJJDP-Required Plan Component #1 - A timetable of activities that will lead to full adherence to Section 223(a)(12) of the JJDP Act within 2 years of the submission of the plan**

**March, 2006 to September, 2006**      BJJ staff are providing information to and eliciting support from the Director of DHS.

BJJ staff, in conjunction with SAG members, are drafting correspondence to the Governor to explain the new OJJDP interpretation of the sight/sound separation requirement. Based on this information, the Governor may join with governors of other states in writing to OJJDP to express concerns regarding the new interpretation and its potentially negative impact on individual affected youth.

DHS has appointed a Waiver Committee to study the impact of the waiver process and to promote awareness of waiver issues.

State will gather and review information on all waived youth who were placed in juvenile facilities and remained in those placements until attaining the age of 17. Each case will be studied and special attention will be placed on the potential impact of removal of such individuals from current programs.

**September, 2006 to March, 2007** State will review program availability and facility capacity at juvenile facilities as well as potential options for placement at Department of Corrections facilities.

State will study feasibility of reconfiguration necessary to comply with new interpretation of sight/sound separation requirement, including potential funding barriers.

**March, 2007 to September, 2007** State will elicit input from judges and legislators about the impact of potential changes to programs and placements.

**September, 2007 to March, 2008** Substantial compliance with the OJJDP mandate to separate offenders in juvenile facilities.

**OJJDP-Required Plan Component #2 - Identification of the barriers which may be encountered in implementing such plan and accomplishing separation.**

- a) Lack of program services. If separation cannot be achieved within the BJJ system of juvenile facilities, then support services, educational services, etc. would not be available to individuals who may be transferred to adult facilities.
- b) Economic issues. Re-opening a closed juvenile facility may not be possible without extensive renovation to meet current standards. Further, given disparate security levels of the waived youth, more than one program may be needed.
- c) Treatment interruption. While careful consideration is taken to provide appropriate care and treatment of youth in confinement, removal of an individual from a successful treatment program may cause undue hardship.
- d) Approval of executive and legislative branches. Approval of the Governor would be sought for changing the state's detention practices, and approval from legislators would be needed for changes in appropriations.
- e) Judicial support. BJJ has no indication that juvenile court judges would support a change in the state's detention practices when such a change could be perceived as taking away judicial discretion.



- f) Lack of supporting research. OJJDP has not provided any research indicating that youth are better served with the new interpretation of the sight/sound separation requirement.
- g) Licensing and child care issues. Current licensing regulations may preclude placement of a significant youth population over age 18 at a single facility.

**OJJDP-Required Plan Component #3 - Discussion of any proposed changes to state law, judicial policy or agency procedures which will support the separation of juvenile offenders from adult inmates in secure facilities.**

The Department of Human Services (DHS) will convene a work group consisting of the judiciary, legislators, Michigan Prosecuting Attorneys Association and others to make recommendations to DHS whether any statutory amendments and/or court rules are warranted for achieving compliance with the separation provision.

For example, only juveniles convicted in adult court for the following offenses are impacted by the separation provision:

- Assault with intent to rob while armed, MCL 750.89;
- Bank, safe or vault robbery, MCL 750.531;
- First-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon;
- Assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
- Escape or attempted escape from a medium- or high-security juvenile facility operated by the Department of Human Services or a high-security facility operated by a private agency under contract with the Department of Human Services, MCL 750.186a;
- Sale or delivery of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i), or possession of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7403(2)(a)(i);
- Any attempt, MCL 750.92, solicitation, MCL 750.157b, or conspiracy, MCL 750.157a, to commit a specified juvenile violation other than murder;
- Any lesser-included offense of the above offenses arising out of the same transaction;
- Any other violation arising out of the same transaction if the juvenile is charged with one of the above offenses.

The court may conduct a second hearing to determine if it is in the best interest of the public to sentence the youth as a juvenile.

The work group may recommend an amendment to the current Juvenile Code that cures Michigan's current violation of the separation provision. For example, a juvenile charged with any of the aforementioned offenses must be adjudicated in the Family Division-Juvenile Section.

**OJJDP-Required Plan Component #4 - Plan for how separation will be achieved, if adult inmates are to be maintained within juvenile facilities, in residential areas, vocational units, infirmaries and other program areas.**

The state will not know how separation will be achieved until the extent of the waived population has been examined. Once that has been accomplished, various alternatives would be under review. Options could include placement in a separate juvenile facility, placement in a separate juvenile program, or placement with the Department of Corrections.

**OJJDP-Required Plan Component #5 - Plan for monitoring and reporting to OJJDP on the status of the implementation of the proposed plan of action.**

The state will report to OJJDP at six month intervals and will include updated information in the annual report to OJJDP.

**OJJDP-Required Plan Component #6 - Identification of any technical assistance that may be required to support the implementation of the plan.**

In general, technical assistance needs can only be determined as the state proceeds with the timetable of activities.